

Senate File 431 - Introduced

SENATE FILE _____
BY COMMITTEE ON JUDICIARY

(SUCCESSOR TO SSB 1275)

Passed Senate, Date _____ Passed House, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act relating to the reorganization of
2 operating=while=intoxicated criminal offenses, making related
3 changes, and providing an effective date.
4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:
5 TLSB 1856SV 83
6 rh/nh/8

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1 1 Section 1. Section 321J.2, Code 2009, is amended by
1 2 striking the section and inserting in lieu thereof the
1 3 following:
1 4 321J.2 OPERATING WHILE UNDER THE INFLUENCE OF ALCOHOL OR A
1 5 DRUG OR WHILE HAVING AN ALCOHOL CONCENTRATION OF .08 OR MORE
1 6 (OWI).
1 7 1. A person commits the offense of operating while
1 8 intoxicated if the person operates a motor vehicle in this
1 9 state in any of the following conditions:
1 10 a. While under the influence of an alcoholic beverage or
1 11 other drug or a combination of such substances.
1 12 b. While having an alcohol concentration of .08 or more.
1 13 c. While any amount of a controlled substance is present
1 14 in the person, as measured in the person's blood or urine.
1 15 2. A person who violates subsection 1 commits:
1 16 a. A serious misdemeanor for the first offense.
1 17 b. An aggravated misdemeanor for a second offense.
1 18 c. A class "D" felony for a third offense and each
1 19 subsequent offense.
1 20 3. A first offense is punishable by all of the following:
1 21 a. A minimum period of imprisonment in the county jail of
1 22 forty-eight hours, but not to exceed one year, to be served as
1 23 ordered by the court, less credit for any time the person was
1 24 confined in a jail or detention facility following arrest or
1 25 for any time the person spent in a court-ordered
1 26 operating=while=intoxicated program that provides law
1 27 enforcement security. However, the court, in ordering service
1 28 of the sentence and in its discretion, may accommodate the
1 29 defendant's work schedule.
1 30 b. (1) With the consent of the defendant, the court may
1 31 defer judgment pursuant to section 907.3 and may place the
1 32 defendant on probation upon conditions as it may require.
1 33 Upon a showing that the defendant is not fulfilling the
1 34 conditions of probation, the court may revoke probation and
1 35 impose any sentence authorized by law. Before taking such
2 1 action, the court shall give the defendant an opportunity to
2 2 be heard on any matter relevant to the proposed action. Upon
2 3 violation of the conditions of probation, the court may
2 4 proceed as provided in chapter 908. Upon fulfillment of the
2 5 conditions of probation and the payment of fees imposed and
2 6 not waived by the judicial district department of correctional
2 7 services under section 905.14, the defendant shall be
2 8 discharged without entry of judgment.
2 9 (2) A person is not eligible for a deferred judgment under
2 10 section 907.3 if the person has been convicted of a violation
2 11 of this section or the person's driver's license has been
2 12 revoked under this chapter, and any of the following apply:
2 13 (a) If the defendant's alcohol concentration established
2 14 by the results of an analysis of a specimen of the defendant's
2 15 blood, breath, or urine withdrawn in accordance with this

chapter exceeds .15, regardless of whether or not the alcohol concentration indicated by the chemical test minus the established margin of error inherent in the device or method used to conduct the test equals an alcohol concentration of .15 or more.

(b) If the defendant has previously been convicted of a violation of subsection 1 or a statute in another state substantially corresponding to subsection 1.

(c) If the defendant has previously received a deferred judgment or sentence for a violation of subsection 1 or for a violation of a statute in another state substantially corresponding to subsection 1.

(d) If the defendant refused to consent to testing requested in accordance with section 321J.6.

(e) If the offense under this chapter results in bodily injury to a person other than the defendant.

c. Assessment of a fine of one thousand two hundred fifty dollars. However, in the discretion of the court, if no personal or property injury has resulted from the defendant's actions, the court may waive up to six hundred twenty-five dollars of the fine when the defendant presents to the court at the end of the minimum period of ineligibility a temporary restricted license issued pursuant to section 321J.20.

(1) Upon the entry of a deferred judgment, a civil penalty shall be assessed as provided in section 907.14 in an amount not less than the amount of the criminal fine authorized pursuant to this paragraph "c".

(2) As an alternative to a portion or all of the fine, the court may order the person to perform unpaid community service. However, the court shall not order the person to perform unpaid community service in lieu of a civil penalty or victim restitution. Surcharges and fees shall also be assessed pursuant to chapter 911.

d. Revocation of the person's driver's license for a minimum period of one hundred eighty days up to a maximum revocation period of one year, pursuant to section 321J.4, subsection 1, section 321J.9, or section 321J.12, subsection 2. If a revocation occurs due to test refusal under section 321J.9, the defendant shall be ineligible for a temporary restricted license for a period of ninety days.

(1) A defendant whose alcohol concentration is .08 or more but not more than .10 shall not be eligible for any temporary restricted license for at least thirty days if a test was obtained and an accident resulting in personal injury or property damage occurred. The defendant shall be ordered to install an ignition interlock device of a type approved by the commissioner of public safety on all vehicles owned or operated by the defendant if the defendant seeks a temporary restricted license. There shall be no such period of ineligibility if no such accident occurred, and the defendant shall not be ordered to install an ignition interlock device.

(2) A defendant whose alcohol concentration is more than .10 shall not be eligible for any temporary restricted license for at least thirty days if a test was obtained, and an accident resulting in personal injury or property damage occurred or the defendant's alcohol concentration exceeded .15. There shall be no such period of ineligibility if no such accident occurred and the defendant's alcohol concentration did not exceed .15. In either case, where a defendant's alcohol concentration is more than .10, the defendant shall be ordered to install an ignition interlock device of a type approved by the commissioner of public safety on all vehicles owned or operated by the defendant if the defendant seeks a temporary restricted license.

e. Assignment to substance abuse evaluation and treatment, a course for drinking drivers, and, if available and appropriate, a reality education substance abuse prevention program pursuant to section 321J.24.

4. A second offense is punishable by all of the following:

a. A minimum period of imprisonment in the county jail or community-based correctional facility of seven days but not to exceed two years.

b. Assessment of a minimum fine of one thousand eight hundred fifty dollars and a maximum fine of six thousand two hundred fifty dollars. Surcharges and fees shall be assessed pursuant to chapter 911.

c. Revocation of the defendant's driver's license for a period of one year, if a revocation occurs pursuant to section 321J.12, subsection 1. If a revocation occurs due to test refusal under section 321J.9, or pursuant to section 321J.4, subsection 2, the defendant's license shall be revoked for a

4 27 period of two years.

4 28 d. Assignment to substance abuse evaluation and treatment,

4 29 a course for drinking drivers, and, if available and

4 30 appropriate, a reality education substance abuse prevention

4 31 program pursuant to section 321J.24.

4 32 5. A third offense is punishable by all of the following:

4 33 a. Commitment to the custody of the director of the

4 34 department of corrections for an indeterminate term not to

4 35 exceed five years, with a mandatory minimum term of thirty

5 1 days.

5 2 (1) If the court does not suspend a person's sentence of

5 3 commitment to the custody of the director of the department of

5 4 corrections under this paragraph "a", the person shall be

5 5 assigned to a facility pursuant to section 904.513.

5 6 (2) If the court suspends a person's sentence of

5 7 commitment to the custody of the director of the department of

5 8 corrections under this paragraph "a", the court shall order

5 9 the person to serve not less than thirty days nor more than

5 10 one year in the county jail, and the person may be committed

5 11 to treatment in the community under section 907.6.

5 12 b. Assessment of a minimum fine of three thousand one

5 13 hundred twenty-five dollars and a maximum fine of nine

5 14 thousand three hundred seventy-five dollars. Surcharges and

5 15 fees shall be assessed pursuant to chapter 911.

5 16 c. Revocation of the person's driver's license for a

5 17 period of six years pursuant to section 321J.4, subsection 4.

5 18 d. Assignment to substance abuse evaluation and treatment,

5 19 a course for drinking drivers, and, if available and

5 20 appropriate, a reality education substance abuse program

5 21 pursuant to section 321J.24.

5 22 6. To the extent that section 907.3 allows, the court may

5 23 impose additional sentencing terms and conditions.

5 24 7. a. All persons convicted of an offense under

5 25 subsection 2 shall be ordered, at the person's expense, to

5 26 undergo, prior to sentencing, a substance abuse evaluation.

5 27 The court shall order the person to follow the recommendations

5 28 proposed in the substance abuse evaluation as provided in

5 29 section 321J.3.

5 30 b. Where the program is available and is appropriate for

5 31 the convicted person, a person convicted of an offense under

5 32 subsection 2 shall be ordered to participate in a reality

5 33 education substance abuse prevention program as provided in

5 34 section 321J.24.

5 35 c. A minimum term of imprisonment in a county jail or

6 1 community-based correctional facility imposed on a person

6 2 convicted of a second or subsequent offense under subsection

6 3 2, paragraph "b" or "c" shall be served on consecutive days.

6 4 However, if the sentencing court finds that service of the

6 5 full minimum term on consecutive days would work an undue

6 6 hardship on the person, or finds that sufficient jail space is

6 7 not available and is not reasonably expected to become

6 8 available within four months after sentencing to incarcerate

6 9 the person serving the minimum sentence on consecutive days,

6 10 the court may order the person to serve the minimum term in

6 11 segments of at least forty-eight hours and to perform a

6 12 specified number of hours of unpaid community service as

6 13 deemed appropriate by the sentencing court.

6 14 8. In determining if a violation charged is a second or

6 15 subsequent offense for purposes of criminal sentencing or

6 16 license revocation under this chapter:

6 17 a. Any conviction or revocation deleted from motor vehicle

6 18 operating records pursuant to section 321.12 shall not be

6 19 considered as a previous offense.

6 20 b. Deferred judgments entered pursuant to section 907.3

6 21 for violations of this section shall be counted as previous

6 22 offenses.

6 23 c. Convictions or the equivalent of deferred judgments for

6 24 violations in any other states under statutes substantially

6 25 corresponding to this section shall be counted as previous

6 26 offenses. The courts shall judicially notice the statutes of

6 27 other states which define offenses substantially equivalent to

6 28 the one defined in this section and can therefore be

6 29 considered corresponding statutes. Each previous violation on

6 30 which conviction or deferral of judgment was entered prior to

6 31 the date of the violation charged shall be considered and

6 32 counted as a separate previous offense.

6 33 9. A person shall not be convicted and sentenced for more

6 34 than one violation of this section for actions arising out of

6 35 the same event or occurrence, even if the event or occurrence

7 1 involves more than one of the conditions specified in

7 2 subsection 1.

7 3 10. The clerk of the district court shall immediately
7 4 certify to the department a true copy of each order entered
7 5 with respect to deferral of judgment, deferral of sentence, or
7 6 pronouncement of judgment and sentence for a defendant under
7 7 this section.

7 8 11. a. This section does not apply to a person operating
7 9 a motor vehicle while under the influence of a drug if the
7 10 substance was prescribed for the person and was taken under
7 11 the prescription and in accordance with the directions of a
7 12 medical practitioner as defined in chapter 155A or if the
7 13 substance was dispensed by a pharmacist without a prescription
7 14 pursuant to the rules of the board of pharmacy, if there is no
7 15 evidence of the consumption of alcohol and the medical
7 16 practitioner or pharmacist had not directed the person to
7 17 refrain from operating a motor vehicle.

7 18 b. When charged with a violation of subsection 1,
7 19 paragraph "c", a person may assert, as an affirmative defense,
7 20 that the controlled substance present in the person's blood or
7 21 urine was prescribed or dispensed for the person and was taken
7 22 in accordance with the directions of a practitioner and the
7 23 labeling directions of the pharmacy, as that person and place
7 24 of business are defined in section 155A.3.

7 25 12. In any prosecution under this section, evidence of the
7 26 results of analysis of a specimen of the defendant's blood,
7 27 breath, or urine is admissible upon proof of a proper
7 28 foundation.

7 29 a. The alcohol concentration established by the results of
7 30 an analysis of a specimen of the defendant's blood, breath, or
7 31 urine withdrawn within two hours after the defendant was
7 32 driving or in physical control of a motor vehicle is presumed
7 33 to be the alcohol concentration at the time of driving or
7 34 being in physical control of the motor vehicle.

7 35 b. The presence of a controlled substance or other drug
8 1 established by the results of analysis of a specimen of the
8 2 defendant's blood or urine withdrawn within two hours after
8 3 the defendant was driving or in physical control of a motor
8 4 vehicle is presumed to show the presence of such controlled
8 5 substance or other drug in the defendant at the time of
8 6 driving or being in physical control of the motor vehicle.

8 7 c. The department of public safety shall adopt nationally
8 8 accepted standards for determining detectable levels of
8 9 controlled substances in the division of criminal
8 10 investigation's initial laboratory screening test for
8 11 controlled substances.

8 12 13. a. In addition to any fine or penalty imposed under
8 13 this chapter, the court shall order a defendant convicted of
8 14 or receiving a deferred judgment for a violation of this
8 15 section to make restitution for damages resulting directly
8 16 from the violation, to the victim, pursuant to chapter 910.
8 17 An amount paid pursuant to this restitution order shall be
8 18 credited toward any adverse judgment in a subsequent civil
8 19 proceeding arising from the same occurrence. However, other
8 20 than establishing a credit, a restitution proceeding pursuant
8 21 to this section shall not be given evidentiary or preclusive
8 22 effect in a subsequent civil proceeding arising from the same
8 23 occurrence.

8 24 b. The court may order restitution paid to any public
8 25 agency for the costs of the emergency response resulting from
8 26 the actions constituting a violation of this section, not
8 27 exceeding five hundred dollars per public agency for each such
8 28 response. For the purposes of this paragraph, "emergency
8 29 response" means any incident requiring response by fire
8 30 fighting, law enforcement, ambulance, medical, or other
8 31 emergency services. A public agency seeking such restitution
8 32 shall consult with the county attorney regarding the expenses
8 33 incurred by the public agency, and the county attorney may
8 34 include the expenses in the statement of pecuniary damages
8 35 pursuant to section 910.3.

9 1 14. In any prosecution under this section, the results of
9 2 a chemical test shall not be used to prove a violation of
9 3 subsection 1, paragraph "b" or "c", if the alcohol, controlled
9 4 substance, or other drug concentration indicated by the
9 5 chemical test minus the established margin of error inherent
9 6 in the device or method used to conduct the chemical test does
9 7 not equal or exceed the level prohibited by subsection 1,
9 8 paragraph "b" or "c".

9 9 Sec. 2. Section 321J.3, subsection 1, paragraph a, Code
9 10 2009, is amended to read as follows:

9 11 a. In addition to orders issued pursuant to section
9 12 321J.2, ~~subsection 3~~ subsections 3, 4, and 5, and section
9 13 321J.17, the court shall order any defendant convicted under

9 14 section 321J.2 to follow the recommendations proposed in the
9 15 substance abuse evaluation for appropriate substance abuse
9 16 treatment for the defendant. Court-ordered substance abuse
9 17 treatment is subject to the periodic reporting requirements of
9 18 section 125.86.

9 19 Sec. 3. Section 707.6A, subsection 6, Code 2009, is
9 20 amended to read as follows:

9 21 6. Except for the purpose of sentencing under section
9 22 321J.2, ~~subsection 2~~ subsections 3, 4, and 5, a conviction or
9 23 deferral of judgment for a violation of this section, where a
9 24 violation of section 321J.2 is admitted or proved, shall be
9 25 treated as a conviction or deferral of judgment for a
9 26 violation of section 321J.2 for the purposes of chapters 321,
9 27 321A, and 321J, and section 907.3, subsection 1.

9 28 Sec. 4. Section 902.3, Code 2009, is amended to read as
9 29 follows:

9 30 902.3 INDETERMINATE SENTENCE.

9 31 When a judgment of conviction of a felony other than a
9 32 class "A" felony is entered against a person, the court, in
9 33 imposing a sentence of confinement, shall commit the person
9 34 into the custody of the director of the Iowa department of
9 35 corrections for an indeterminate term, the maximum length of
10 1 which shall not exceed the limits as fixed by section 902.9,
10 2 unless otherwise prescribed by statute, nor shall the term be
10 3 less than the minimum term imposed by law, if a minimum
10 4 sentence is provided. However, if the court suspends a
10 5 person's sentence under section 321J.2, subsection ~~2~~ 5,
10 6 paragraph ~~"c"~~ "a", the court shall order the offender to serve
10 7 time in the county jail as provided in section 321J.2,
10 8 subsection ~~2~~ 5, paragraph ~~"c"~~ "a", notwithstanding any
10 9 provision to the contrary in section 903.4.

10 10 Sec. 5. Section 907.3, subsection 3, paragraph c, Code
10 11 2009, is amended to read as follows:

10 12 c. A mandatory minimum sentence of incarceration imposed
10 13 pursuant to a violation of section 321J.2, subsection 1;
10 14 furthermore, the court shall not suspend any part of a
10 15 sentence not involving incarceration imposed pursuant to
10 16 section 321J.2, subsection ~~2~~ 3, 4, or 5, beyond the mandatory
10 17 minimum if any of the following apply:

10 18 Sec. 6. Section 910.1, subsection 4, Code 2009, is amended
10 19 to read as follows:

10 20 4. "Restitution" means payment of pecuniary damages to a
10 21 victim in an amount and in the manner provided by the
10 22 offender's plan of restitution. "Restitution" also includes
10 23 fines, penalties, and surcharges, the contribution of funds to
10 24 a local anticrime organization which provided assistance to
10 25 law enforcement in an offender's case, the payment of crime
10 26 victim compensation program reimbursements, payment of
10 27 restitution to public agencies pursuant to section 321J.2,
10 28 subsection ~~9~~ 13, paragraph "b", court costs including
10 29 correctional fees approved pursuant to section 356.7,
10 30 court-appointed attorney fees ordered pursuant to section
10 31 815.9, including the expense of a public defender, and the
10 32 performance of a public service by an offender in an amount
10 33 set by the court when the offender cannot reasonably pay all
10 34 or part of the court costs including correctional fees
10 35 approved pursuant to section 356.7, or court-appointed
11 1 attorney fees ordered pursuant to section 815.9, including the
11 2 expense of a public defender.

11 3 Sec. 7. Section 910.2, unnumbered paragraph 1, Code 2009,
11 4 is amended to read as follows:

11 5 In all criminal cases in which there is a plea of guilty,
11 6 verdict of guilty, or special verdict upon which a judgment of
11 7 conviction is rendered, the sentencing court shall order that
11 8 restitution be made by each offender to the victims of the
11 9 offender's criminal activities, to the clerk of court for
11 10 fines, penalties, surcharges, and, to the extent that the
11 11 offender is reasonably able to pay, for crime victim
11 12 assistance reimbursement, restitution to public agencies
11 13 pursuant to section 321J.2, subsection ~~9~~ 13, paragraph "b",
11 14 court costs including correctional fees approved pursuant to
11 15 section 356.7, court-appointed attorney fees ordered pursuant
11 16 to section 815.9, including the expense of a public defender,
11 17 when applicable, or contribution to a local anticrime
11 18 organization. However, victims shall be paid in full before
11 19 fines, penalties, and surcharges, crime victim compensation
11 20 program reimbursement, public agencies, court costs including
11 21 correctional fees approved pursuant to section 356.7,
11 22 court-appointed attorney fees ordered pursuant to section
11 23 815.9, including the expenses of a public defender, or
11 24 contributions to a local anticrime organization are paid. In

11 25 structuring a plan of restitution, the court shall provide for
11 26 payments in the following order of priority: victim, fines,
11 27 penalties, and surcharges, crime victim compensation program
11 28 reimbursement, public agencies, court costs including
11 29 correctional fees approved pursuant to section 356.7,
11 30 court-appointed attorney fees ordered pursuant to section
11 31 815.9, including the expense of a public defender, and
11 32 contribution to a local anticrime organization.

11 33 Sec. 8. Section 910.3, Code 2009, is amended to read as
11 34 follows:

11 35 910.3 DETERMINATION OF AMOUNT OF RESTITUTION.

12 1 The county attorney shall prepare a statement of pecuniary
12 2 damages to victims of the defendant and, if applicable, any
12 3 award by the crime victim compensation program and expenses
12 4 incurred by public agencies pursuant to section 321J.2,
12 5 subsection ~~9~~ 13, paragraph "b", and shall provide the
12 6 statement to the presentence investigator or submit the
12 7 statement to the court at the time of sentencing. The clerk
12 8 of court shall prepare a statement of court-appointed attorney
12 9 fees ordered pursuant to section 815.9, including the expense
12 10 of a public defender, and court costs including correctional
12 11 fees claimed by a sheriff or municipality pursuant to section
12 12 356.7, which shall be provided to the presentence investigator
12 13 or submitted to the court at the time of sentencing. If these
12 14 statements are provided to the presentence investigator, they
12 15 shall become a part of the presentence report. If pecuniary
12 16 damage amounts are not available at the time of sentencing,
12 17 the county attorney shall provide a statement of pecuniary
12 18 damages incurred up to that time to the clerk of court. The
12 19 statement shall be provided no later than thirty days after
12 20 sentencing. If a defendant believes no person suffered
12 21 pecuniary damages, the defendant shall so state. If the
12 22 defendant has any mental or physical impairment which would
12 23 limit or prohibit the performance of a public service, the
12 24 defendant shall so state. The court may order a mental or
12 25 physical examination, or both, of the defendant to determine a
12 26 proper course of action. At the time of sentencing or at a
12 27 later date to be determined by the court, the court shall set
12 28 out the amount of restitution including the amount of public
12 29 service to be performed as restitution and the persons to whom
12 30 restitution must be paid. If the full amount of restitution
12 31 cannot be determined at the time of sentencing, the court
12 32 shall issue a temporary order determining a reasonable amount
12 33 for restitution identified up to that time. At a later date
12 34 as determined by the court, the court shall issue a permanent,
12 35 supplemental order, setting the full amount of restitution.
13 1 The court shall enter further supplemental orders, if
13 2 necessary. These court orders shall be known as the plan of
13 3 restitution.

13 4 Sec. 9. EFFECTIVE DATE. This Act takes effect December 1,
13 5 2009.

13 6 EXPLANATION

13 7 This bill reorganizes and restructures Code section 321J.2
13 8 relating to operating-while-intoxicated (OWI) criminal
13 9 offenses.

13 10 The bill reorganizes criminal penalty, sentencing, and
13 11 related license revocation provisions currently in Code
13 12 section 321J.2. The bill also duplicates certain provisions
13 13 in Code sections 321J.4 (revocation of licenses, ignition
13 14 interlock devices, and temporary restricted licenses), 903.1
13 15 (maximum term of imprisonment for first offense OWI offenses),
13 16 907.3 (eligibility provisions for deferred judgments, deferred
13 17 sentences, and suspended sentences), and 907.14 (civil penalty
13 18 provisions for deferred judgments), and places such provisions
13 19 in Code section 321J.2. All of the revisions are
13 20 nonsubstantive.

13 21 The bill makes conforming changes in Code section 707.6A
13 22 (homicide or serious injury by vehicle), Code section 902.3
13 23 (indeterminate sentences), and Code chapter 910 (victim
13 24 restitution).

13 25 The bill takes effect December 1, 2009.

13 26 LSB 1856SV 83

13 27 rh/nh/8